



WASHINGTON STATE REPUBLICAN PARTY

October 3, 2006

Lawrence H. Norton, Esq.
General Counsel
Federal Election Commission
999 E Street, N.W.
Washington, DC 20463

MUR # 5834

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FEDERAL ELECTION
COMMISSION
OFFICE OF GENERAL
COUNSEL

2006 OCT -4 P 2:49

Re: Complaint Against Darcy Burner for Congress, Philip Lloyd as Treasurer

Dear Mr. Norton:

Enclosed for your review is a complaint against Darcy Burner for Congress, the principal campaign committee for Darcy Burner, a candidate for the U.S. House of Representatives in Washington's Eighth Congressional District, for failing to comply with disclaimer requirements, specifically the "stand by your ad" requirements, applicable to television advertisements she has broadcast. Because Burner has failed to include all the "stand by your ad" requirements, she is not entitled to the discounted rate campaign advertising usually provided to campaigns. In the event she does receive such a discount, she would have accepted a prohibited corporate in-kind contribution. A copy of the advertisement is enclosed.

I. INTRODUCTION

Darcy Burner has recently begun to advertise on television. Her most recent television ad, "Burner Bio," (See Exhibit A) which has run on Seattle area stations KCPQ, KOMO, KONG, KIRO and KING, does not contain the legally mandated disclaimer language, specifically the "stand by your ad" requirements. Because her ads fail to comply with the "stand by your ad" requirements, she is not entitled to the lowest unit charge ordinarily available to candidates, and in the event she receives lowest unit charge, Burner would receive a prohibited in-kind corporate contribution from the

television station(s) providing the discount.

II. ANALYSIS

A. Darcy Burner for Congress' Advertisement Violates Disclaimer Requirements.

Pursuant to FEC regulations, political committees such as the Burner campaign must include a disclaimer on all "public communications," regardless of whether the communication expressly advocates the election or defeat of a clearly identified candidate, or solicits funds in connection with a federal election. The term "public communication" includes broadcast, cable or satellite transmissions. 11 CFR § 100.29.

If a public communication is authorized and paid for by a candidate or his/her campaign committee, the disclaimer notice must identify who paid for the message. 11 CFR § 110.11(b)(1). Similarly, at the end of television campaign advertisement there *must appear, in clearly readable writing, a statement that identifies the candidate and states that he or she has approved the communication* (emphasis added). 11 CFR § 110(c)(3)(ii-iii). Such a disclaimer is commonly called the "stand by your ad" requirements.

The disputed Darcy Burner for Congress advertisement does not contain a written statement indicating that Burner, as the candidate, approved the communication. A simple review of the Darcy Burner for Congress advertisement reveals the advertisement is missing the requisite written statement that the candidate approved the communication. Burner's failure to include the required disclaimer is a violation of 11 CFR § 110.11(c)(3)(ii-iii).

B. Burner's Advertisement Does Not Qualify for Lowest Unit Charge (LUC).

In addition to a violation of the Federal Election Commission rules regarding disclaimers, Burner has also ran afoul of Federal Communications rules. Federal law governs sales price requirements for political advertisements, including mandating in certain circumstances discounted advertising rates (commonly called lowest unit charge or LUC). The LUC is the lowest advertising rate that a station charges other advertisers for the same class and amount of time for the same period. See 47 U.S.C. § 315(b)(1) and 47 CFR § 73.1942(a)(1).

The Bipartisan Campaign Reform Act (BCRA) amended section 315(b) to provide that a federal candidate "shall not be entitled" to receive the LUC if any of her advertisements have failed to include the required FCC statements. Under the plain meaning of the statute, a candidate who satisfies the Communications Act requirements is guaranteed the LUC as a matter of law. It is equally plain that if a candidate fails to include the proper disclaimer statement, that candidate loses her legal guarantee to receive the LUC. In other words, a broadcast station is not required to provide the LUC

to a candidate's campaign when the campaign's advertisement does not comply with the 'stand by your ad' component of the BCRA.

C. In the event a station gives Burner LUC, it makes a prohibited in-kind contribution.

Federal election law and FEC regulations define the terms "contribution" and "expenditure" to include any gift of money or anything of value for the purpose of influencing a Federal election. 2 U.S.C. §§ 431(8)(A)(i) and 431(9)(A)(i); 11 CFR §100.52(a) and 100.111(a); *see also* 2 U.S.C. § 441b(b)(2) and 11 CFR § 114.1(a)(1) (providing a similar definition for "contribution or expenditure" with respect to corporate activity). Commission regulations further define "anything of value" to include all in-kind contributions and state that, unless specifically exempted under 11 CFR § 100.71(a), the provision of any goods or services (including advertising services, media time and the like) without charge, or at a charge which is less than the usual and normal charge for such goods or services, is a contribution. 11 CFR § 100.52(d)(1); see also 11 CFR §100.111(e)(1).

Given that Burner is not entitled to the LUC for failure to include a proper disclaimer, any station that nonetheless provides to her discounted advertising time would be providing that time at less than usual and normal charge. Any such discount would amount to a prohibited in-kind corporate contribution. As then-Chairman Scott Thomas opined:

In this matter the central question was whether a broadcast station could offer "lowest unit charge" (LUC) to a candidate campaign that purposely had not complied with the 'stand by your ad' component of the Bipartisan Campaign Reform Act. In determining whether a station has made an in-kind contribution by charging too little, the FEC normally must analyze whether a station has provided its services for the "usual and normal" charge in a commercial sense. . . .

I do not subscribe to the view that stations would be able to offer LUC to a candidate who had not satisfied "stand by your ad" requirements simply because some other candidates were required to be given LUC. While the FEC ruled in the pre-BCRA era that stations willing to treat all candidates the same could provide ad time for free, the "stand by your ad" provisions in BCRA signaled a significant change in Congress's approach in the area. It is very clear to me that **candidates who do not comply with the new disclaimer requirements are to be prevented from getting the benefit of LUC.**

FEC Advisory Opinion 2004-43 (concurring opinion of Chairman Scott E. Thomas) (emphasis added).

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Thus, because Burner has failed to comply with the "stand by your ad" requirements, she is prevented from getting the benefit of the LUC. To provide her with the LUC would constitute a prohibited in-kind contribution from the corporate stations.

III. CONCLUSION

In summary, Darcy Burner for Congress' campaign advertisement fails to meet the requirements for disclaimers as set forth in 11 CFR § 110.11(c)(3)(ii-iii). Absent the necessary disclaimer, Burner is not entitled to receive the LUC for her advertising under the plain language of 47 U.S.C. § 315(b)(2)(B). In the event a station gives Darcy Burner for Congress the LUC, both Burner and the station would violate 2 U.S.C. § 441b, by providing the Burner campaign an illegal, corporate, in-kind campaign contribution.

In light of the above outlined violations, we respectfully request the Commission take the following action: (1) investigate the Burner campaign for further violations of applicable law; (2) impose a significant penalty against Burner; (3) prohibit Burner from engaging in similar unlawful conduct in the future; and (4) such other remedies as the Commission finds appropriate.

Sincerely,



Diane E Tebelius
Chairman
Washington State Republican Party

Enclosure

Sworn before me this 3 day of October, 2006.



NOTARY PUBLIC

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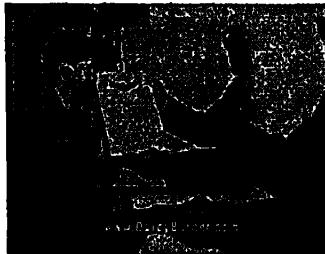
EXHIBIT A

HOUSE/WA08 BURNER BIO 60

Brand: POL-CONGRESS (8332)
 Parent: POLITICAL ADV.
 Aired: 08/10/2008 - 08/12/2008
 Creative Id: 4709270



[Announcer]: The daughter of an Air Force veteran and a public school teacher, Darcy Burner learned early that in America with hard work anything



is possible. Darcy grew up in military towns and attended public schools. And like many Americans today, her parents struggled



to make ends meet. She worked hard in school, put herself through college, and went on to a successful career at Microsoft.



She married a military veteran and they have a young son. Darcy knows our priorities-Improving



education to create opportunity, making healthcare affordable, protecting Social Security and pensions, keeping



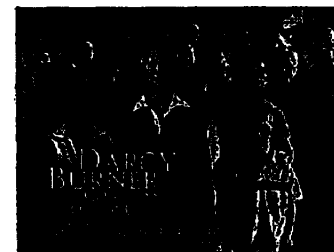
our promises to our troops and veterans. [Burner]: "For many families, no matter how hard they work, the American dream is slipping away."



While the costs of raising a family skyrocket, politicians in Washington D.C. listen to the special interests and offer



no help at all. I'm Darcy Burner and I approve this message." [Crowd]: "So do we." [Burner]: "The way to get the dream back is by changing the direction of the country and putting our priorities first."



[PFB]: Darcy Burner for Congress

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